

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-212-W - ORDER NO. 97-93
FEBRUARY 3, 1997

IN RE: Application of Upstate Heater Utilities,) ORDER
Inc. for Approval of a Transfer of its)
Water Utility to South Carolina Water)
and Sewer Company, L.L. C.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration of our Order No. 96-881, filed jointly by South Carolina Water and Sewer, L.L.C. (SCWS) and Upstate Heater Utilities, Inc. (Upstate)(collectively, the companies). In that Order, we declined to issue a certificate that the proposed sale of the facilities and systems of Upstate to SCWS was in the public interest. We now deny the Petition for Rehearing or Reconsideration, based on the reasoning as stated below, and that stated in Order No. 96-881.

First, the companies state that they have met all statutory and regulatory requirements for the transfer, and that, indeed, in a companion docket (No. 96-213-W), based on the identical application, the Commission approved the transfer of the Heater Utilities, Inc. water utility to SCWS. While this statement may be true, it should be explained that there was no opposition to the sale of Heater's assets to SCWS by the public. Therefore,

even though the Applications may have been identical, the public interest in the two sales was very different. There was no public opposition to the Heater sale, but there was overwhelming public opposition to the Upstate Heater sale.

The public interest has been held to be a matter of policy to be determined by a Public Service Commission. Public Water Supply District v. Public Service Commission, 600 S.W. 2d 147, 155 (Missouri, 1980). Clearly, transactions involving a public utility affect a public interest. Anchor Point v. Shoals Sewer Company and the Public Service Commission of South Carolina, 308 S.C. 422, 418 S.E. 2d 546 (1992). When a Company devotes its property to a use in which the public has an interest, it, in effect, grants to the public an interest in that use and must submit to being controlled by the public for the common good.

In this case, we believe that the public interest was quite evident from the testimony given in Anderson at the night hearing, and in the evidentiary hearing. The people of the area simply did not want the transfer. The public opposition was based on three factors: water quality, the rates presently paid for Upstate's service, and apparent customer preference for some other provider. Despite some conflicting testimony, we believe that we correctly concluded in Order No. 96-881 that there were some water quality problems associated with Upstate's service. The South Carolina Supreme Court has held that this Commission "sits as the trier of facts, akin to a jury of experts." See Hamm v. South Carolina Public Service Commission and South Carolina Electric and Gas

Company, 309 S.C. 282, 422 S.E. 2d 110 (1992). There was no evidence in the record to show that anything specific was going to be done to address these complaints by the buyer, other than very general statements from SCWS. Neither the Parker case (Parker v. South Carolina Public Service Commission, 281 S.C. 215, 314 S.E. 2d 597 (1984)), nor the Welch case (Welch Moving & Storage Company v. Public Service Commission, 301 S.C. at 262, 391 S.E. 2d at 557 (1990)) are applicable in the present case. Both cases quite simply address the fact that expert opinions must be backed with an evidentiary showing of the facts upon which an opinion is predicated. In the present case, we are dealing with ordinary consumers who are complaining about water quality problems. These consumers are certainly able to relate whether or not they are having some problems with their service. No expert opinion, based on any study, is present or appropriate under these circumstances.

Further, Beard-Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948) is inapplicable to the present case on its facts. Beard-Laney was a transportation case in which the Court had to consider whether it was in the power of the Commission to approve the transfer by one motor carrier to another motor carrier a portion of a certificate of public convenience and necessity held by the first motor carrier. Nothing in Beard-Laney indicated the presence in that case of overwhelming public opposition such as is found in the case at bar. Therefore the quoted passage ("Where consent (to transfer) has been sought, and the transferee of the franchise has been found to possess the means to carry out the

franchise and has expressed the desire to do so, the pertinent authorities disclose no principle of public policy which prevents the governing agency from approving the transfer." Joint Petition at 4.) is simply not applicable to the circumstances of this case, since the factual situation under consideration in Beard-Laney was very different.

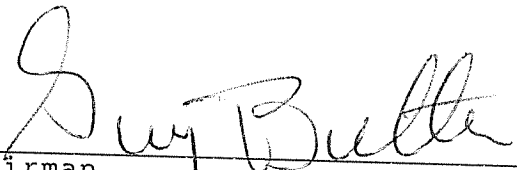
In addition, the public presented major concerns about the rates to be charged upon transfer. In further vocalization of its opposition, Upstate's present customers also expressed a preference to be served by other local water companies. The sum total of all these factors made for very significant opposition from the public, which this Commission could not ignore.

Thus, despite the fact that the ability of SCWS to provide service to the Upstate area was uncontested, we simply could not grant the transfer. Further, both Petitioners describe the "public interest" standard used by this Commission as "impermissibly vague" and one which "should be articulated in statutes and regulations." These are simply not the case. We believe that the standard could not have been clearer. In this case, the public opposition to the sale was overwhelming. Therefore, the Commission used a clearly defined standard in the denial of the transfer. Further, what constitutes the "public interest" simply does not appear in statutes and regulations. We submit that the application of the term must remain somewhat flexible for application in various factual scenarios. However, we believe that overwhelming public opposition serves as a clearly

understood reason for denial of the transfer of the facilities of Upstate to SCWS.

Because of the above stated reasoning the Petition is denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)